

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:23-CV-00323-FL-RN

**AI Thumbnail Maker LLC & Kale
Abrahamson,**

Plaintiffs,

v.

Eric Leopardi,

Defendant.

Order

After the court entered a default judgment against Defendant Eric Leopardi, Plaintiffs AI Thumbnail Maker, LLC and Kale Abrahamson began judgment enforcement proceedings. As part of that process, they served Leopardi with a notice requiring him to appear for a deposition and to bring certain documents with him to the deposition. But Leopardi neither appeared at the deposition nor produced the requested documents.

Plaintiffs then asked this court to compel Leopardi to produce the requested documents, appear at a deposition, and pay certain fees they incurred in connection with the original deposition and their motion to compel. The court granted that request. Apr. 30, 2024 Order, D.E. 50. Specifically, the court required Leopardi to

- Appear for a deposition upon receipt of a deposition notice from Plaintiffs' counsel;
- Produce the documents requested in the original deposition notice within 14 days from the entry of the order; and

- Reimburse Plaintiffs for the reasonable expenses Plaintiffs incurred in bringing their motion to compel, as well as all fees and costs related to the appearance of the court reporter and preparation of the transcript for the original deposition.

Plaintiffs soon sent a second deposition notice to Leopardi by United States mail and email. The notice required him to appear for a deposition at 10:00 a.m. on May 20, 2024, at a law firm in Denver, Colorado and to bring certain documents with him. Leopardi, however, did not appear for the deposition. He has also failed to produce the documents requested in the original deposition notice or reimburse Plaintiffs as required by the April 30, 2024 Order.

Plaintiffs now return to this court seeking sanctions against Leopardi. Although they mailed their motion to his last known address, he failed to respond.

The Federal Rules of Civil Procedure provide that as part of judgment enforcement proceedings, a judgment debtor “may obtain discovery from any person—including the judgment debtor—as provided in these rules[.]” Fed. R. Civ. P. 69(a)(2). Among the discovery tools provided by the Federal Rules is the ability of the court to sanction a party for violating a discovery order. *See id.* 37(b). Rule 37 allows the court to “treat[] . . . the failure to obey any order except an order to submit to a physical or mental evaluation” as contempt of court.” *Id.* 37(b)(2)(A)(vii). That rule also provides that “the court must order the disobedient party . . . to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” *Id.* 37(b)(2)(C).

The record establishes that Leopardi violated the April 30, 2024 Order. So the court will grant the motion for sanctions. D.E. 57.

The court has considered whether to initiate contempt proceedings against Leopardi. While it would be justified in doing so due to his failure to comply with the April 30, 2024 Order, it will not do so at this time.

Instead, the court will award Plaintiffs “the reasonable expenses, including attorney’s fees,” caused by Leopardi’s failure to comply with the April 30, 2024 Order. Fed. R. Civ. P. 37(b)(2)(C). That award includes the reasonable expenses, including attorney’s fees, Plaintiffs incurred in bringing their motion for sanctions; all fees related to the appearance of a court reporter at the original deposition; and all costs related to the preparation of a transcript from the second deposition.

If Plaintiffs attempt to depose Leopardi again, he must comply with the terms of a properly served deposition notice. He must also produce all requested documents within 14 days from the date of entry of this order. Failure to comply with this order may result in the imposition of further sanctions, including the initiation of contempt proceedings.

Dated: August 26, 2024

A handwritten signature in black ink that reads "Robert T. Numbers, II". The signature is written in a cursive, flowing style.

Robert T. Numbers, II
United States Magistrate Judge